

January 14, 2015



Talbot County Planning Commission
Final Decision Summary

Wednesday, December 3, 2014 at 9:00 a.m.

Bradley Meeting Room

11 N. Washington Street, Easton, Maryland

Attendance:

Commission Members:

Thomas Hughes
 Michael Sullivan
 Jack Fischer

Staff:

Mary Kay Verdery, Planning Officer
 Daniel Brandewie, Assistant Planning Officer
 Jeremy Rothwell, Planner I
 Martin Sokolich, Long Range Planner
 Mike Pullen, County Attorney
 Carole Sellman, Recording Secretary

1. Call to Order—Commissioner Hughes called the meeting to order at 9:00 a.m. Commissioner Hughes stated the Commission had only three members today and a project would need a unanimous three vote finding in order to proceed. The applicant was given the choice to postpone to the next months hearing without penalty, or to proceed. The applicant chose to proceed.

2. Decision Summary Review—November 5, 2014—The Commission noted the following corrections to the draft decision summary:

- a. Line 52, at the bottom of page 1 insert need to get definition of infill per MDP/PFA guidelines.
- b. Line 101, On line 38 we need to get some hard numbers regarding the growth area acreage.
- c. Line 142, strike the words things which have happened, insert "elements of the current gateway regulations".

Commissioner Sullivan moved to approve the draft Planning Commission Decision Summary for November 5, 2014, as amended; Commissioner Fischer seconded the motion. The motion carried unanimously.

3. Special Meeting Decision Summary Review—November 5, 2014—The Commission noted the following corrections to the draft decision summary:

- a. The time in the caption should be changed to read 10:50 a.m.
- b. Line 36, add last name and title, Cassandra Van Hooser, Tourism Director.
- c. Line 53, the actual map is shown on page 6-20, not 6-19, check.
- d. Line 55, there is an extra to that needs to be deleted.

Commissioner Sullivan moved to approve the draft Planning Commission Special Meeting Decision Summary for November 5, 2014, starting at 10:50 a.m. and adjourning at 2:30 p.m., as amended; Commissioner Fischer seconded the motion. The motion carried unanimously.

4. Old Business

- a. Decision Summary review—October 1, 2014—The Commission noted the following corrections to the draft decision summary:
- 1) Line 188, revise to read: "Commissioner Fischer shared the view that we need land for industrial use.", strike the remainder, up to the sentence which starts with Commissioner Sullivan.
 - 2) Line 245 and 246, add an "and", so that it reads: "Commissioner Boicourt asked if the 5 year hold was a hard number, and if the Town said they were not going to allow PUDs can the County then dismiss the 5 year hold?"
 - 3) Line 307, add after the comma, "this is consistent with our Comprehensive Plan as long as Talbot Commerce Park remains industrial".
 - 4) Line 346, add an "and" so that it reads: "they have had people stop in to see the wind turbines and they have done tours of the wind turbine site."
 - 5) Line 450, clarify, "Ms. Verdery stated that lighting and screening issues are all part of the site plan process."

Commissioner Sullivan moved to approve the draft Planning Commission Decision Summary for October 1, 2014, as amended; Commissioner Fischer seconded the motion. The motion carried unanimously.

5. New Business

- a. Administrative Variance—David Bofill, A210—8357 Church Neck Road St. Michaels, MD 21663, (map 32, grid 1, parcel 1, zoned Rural Conservation), Robert M. Gearhart, Focus Construction, Agent.

Mr. Rothwell presented the staff report of the applicant's request for an administrative variance to expand a legal non-conforming structure located within the shoreline development buffer by approximately 173 square feet and to rebuild an existing (but damaged) deck that is attached to the same structure. The project came before the Commission in 2010 for a similar application which was approved and a building permit issued. Not known to staff at that time, there was a functioning kitchen in the structure. That changed the classification of what could be done at that time. A memorandum was issued to the applicant and they were given three options: (1) Remove one of the dwelling components (bathroom, cooking area/kitchen or sleeping area) from the structure within 30 days. This would enable the building to be classified as an accessory structure as opposed to a dwelling unit and thus exempt it from complying with the GFA requirements;

(2) File an appeal with the Board of Appeals seeking a variance to expand a non-conforming structure; or (3) Take no action, and continue to use the building as a non-conforming accessory dwelling. This would void the administrative variance approved in October 2010. The applicant chose the third option and the building permit expired. They have since obtained a permit to demolish the existing structure which is still valid. If this variance is approved, the demolition permit will need to be revoked prior to the issuance of a building permit for the improvements associated with this administrative variance.

Staff recommendations include:

1. The applicant shall make an application to the Office of Permits and Inspections, and follow all rules, procedures and construction timelines as outlined regarding new construction.
2. The applicant shall sign a restrictive covenant to remove the existing kitchen and thereby extinguish the ability to convert the said structure to a fully functional dwelling as outlined in the *Talbot County Code* §190-208.
3. Permit 13-218 to demolish the existing structure shall be revoked prior to issuance of a building permit for the construction noted in Administrative Variance A210. As per the *Talbot County Code* §190-169, only those structures present on or before August 13, 1989 shall be considered for an Administrative Variance. Should the applicant desire or need to remove the existing structure, Administrative Variance A210 shall be null and void, and they will be required to obtain a variance from the Board of Appeals if they wish to reconstruct said structure.
4. The applicant shall commence construction on the proposed improvements within eighteen (18) months from the date of the Planning Office's "Notice to Proceed".
5. Natural vegetation of an area three times the extent of the approved disturbance in the buffer shall be planted in the buffer or on the property if planting in the buffer cannot be reasonably accomplished. Disturbance outside the buffer shall be 1:1 ratio. A Buffer Management Plan application may be obtained through the Planning and Zoning Department.

Robert Gearhart of Focus Construction appeared on behalf of David Bofill. Mr. Gearhart stated that the structure as it exists is a legal nonconforming dwelling. Mr. Bofill had a casualty loss on another property which prevented him from proceeding with the previously approved project. This renovation is to improve the aesthetics of the property.

Commissioner Hughes questioned what it entails to remove the kitchen. Ms. Verdery stated it typically requires removing the stove (which is wired differently) along with all elements related to it. The sink and plumbing can be maintained. Then a non-conversion agreement is signed. The structure is inspected during the building process to ensure the stove has been removed.

Mr. Gearhart stated the Bofills want to convert the property structure back to a garage with an open shell. They intend to remove the entire upper floor system. In the future there may be a bedroom, but not at this time.

Commissioner Hughes asked if due to the proximity to the water the Health Department needed to be involved. Mr. Gearhart explained they had already met with Environmental Health and has installed two new septic systems.

Commissioner Fischer commented he did not see it on the plans. Mr. Gearhart pointed out on the plans where the new systems were located

Commissioner Hughes asked for comments from the Commission, staff and public. None were made.

Commissioner Sullivan moved to recommend to the Planning Officer approval of the administrative variance to expand the legal nonconforming structure for David Bofill, 8357 Church Neck Road St. Michael, MD 21663, provided compliance with staff recommendations occurs; Commissioner Fischer seconded. The motion carried unanimously.

b. Annual Report on County Growth

Mr. Sokolich stated to the Commission that this is the 2013 Report, which was actually due to the Maryland Department of Planning earlier in the year. For the third or fourth year in a row, there were a very small number of permits issued for new residential construction. However, he did not want to leave anyone with the impression that the Office of Permits and Inspections was denying permits or holding up said permits for new construction, which is not the case. The majority of permits issued in recent years, including in 2013, have been for renovations, additions, and accessory structures like pools and decks, which was explained and annotated in the cover letter of the report.

Commissioner Hughes stated there appeared to be some confusion with the Maryland Department of Planning regarding their viewpoint and interpretation on the percentage of new residential growth in Priority Funding Areas. The report pointed out that new growth in Talbot County has been occurring in the incorporated towns, which is arguably what the state is looking for. However, because there are few designated growth areas outside the incorporated municipalities, a majority of permits issued for new construction under the County's jurisdiction, have been outside of Priority Funding Areas. The body of the report reflects this point while omitting those permits issued by the municipalities for new construction, which are all located within designated Priority Funding Areas. On one hand Maryland Department of Planning views the County as a whole and on the other hand, the County and the towns are separate. Commissioner Hughes questioned if Mr. Sokolich had addressed this point with Maryland Department of Planning. Mr. Sokolich stated if the data for new residential construction is aggregated from all the municipalities with those from

the County, it would show that the total cumulative growth has taken place within the Priority Funding Areas. Commissioner Hughes questioned if it should be a 10 year review not a 6 year review, and also if it would be worthwhile to throw in building permit numbers from the incorporated towns. Mr. Sokolich stated he would check to see when the change in review periods was passed. Mr. Sokolich stated if he can obtain information from the municipalities he will put them in the cover memo. Commissioner Fischer also suggested listing the total number of building permits applied for.

Commissioner Hughes felt it would be very worthwhile for the incoming members of the Council to have this information on a page to dispel any misunderstandings as to what is going on in the County.

Commissioner Hughes stated there was an existing chart in the 2005 Comprehensive Plan which lists building permits year by year. He recommended placing this chart in the cover letter.

Commissioner Hughes asked for Commission, Staff or Public comment.

Ms. Verdery referred to the last paragraph on the last page of the Report where it states it is impractical to set a percentage. The current Comprehensive Plan talks about different ways to establish how we define development focus. She asked whether is it accurate to say "it is impractical", or is it better to say it "may be impractical" to give us the flexibility to move forward and to use it as a tool in the future. Commissioner Hughes stated he is generally leery to use percentages as goals. The objective should be to meet a vision in the Comprehensive Plan. The goal should be to direct most of the growth in priority funding areas; primarily into the incorporated municipalities of the county.

Mr. Pullen suggested that the third to last paragraph be revised by removing "within priority funding areas outside the County's jurisdiction, i.e." and leaving the rest of the sentence. The last paragraph should be changed so that the following words at the end are removed: "outside the County's jurisdiction" and replaced with "primarily locate growth within the County's five towns."

Commission Hughes stated it would be redundant to change the last paragraph he felt it would be best to strike the last paragraph all together?

Mr. Pullen stated that a goal needs to be set as something to be met. If we don't have a measurement, we don't have a way to determine if the goal has been met. Commissioner Sullivan questioned if that was instead a matter of capacity? Commissioner Hughes stated that growth target figures are something to consider putting in the Comprehensive Plan, but it is outside the purview of this document. Commissioner Fischer stated the growth issue is being laid upon us by economics, sea level rise and other things beyond the County's control. Commissioner

Hughes suggested staff find out the state number and mention the state figure, whatever it is. That number would be a cumulative number, not a strict goal.

Commissioner Sullivan moved to table the recommendation for the 2013 Annual Report on County Growth to the Maryland Department of Planning until the January meeting, with changes as discussed today incorporated; Commissioner Fischer seconded. The motion carried unanimously.

6. Discussions Items

- a. Pier Regulation—Ms. Verdery clarified the revision made to language suggested by County Council that originally said that the 150 foot length would be from mean high water or the landward edge of tidal waters. A citizen asked that it be amended to read from the channelward edge of mean high water. Listening to the tapes and the minutes, what was ultimately decided was a compromise that would be measured from the landward edge of mean high water which would have to be established prior to submittal, one hundred fifty feet. When an applicant submits their plans, the plans would have to have a line which clearly establishes where mean high water is. So the way it is written in our current ordinance, which is adopted by our County Council, is that a pier would be measured 150 feet from mean high water.

Commissioner Hughes stated the County definition of mean high water should mimic the state's definition of mean high water. Ms. Verdery stated we are currently using the Critical Area definition. After the adoption of the comprehensive plan, the County Code will be going through a complete overhaul and the amendment to this definition can be considered at that time.

- b. Major Site Plan—Higgins letter

Commissioner Hughes stated that after review he did not feel the Commission should be sending letters inviting applicants to amend site plans they had violated in the first place, this view was held by all members of the Planning Commission. This is essentially an enforcement issue. Ms. Verdery stated an abatement letter has been sent.

7. Staff Matters

The Board of Appeals granted the Still Waters Variance. The Board of Appeals decision to deny the nontidal wetland variance for KES was upheld.

8. WorkSessions

- a. Review draft Comprehensive Plan

277 **9. Commission Matters**

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279 **10. Adjournment**—Commissioner Hughes adjourned the meeting Planning Commission
280 meeting at 10:15 a.m.
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